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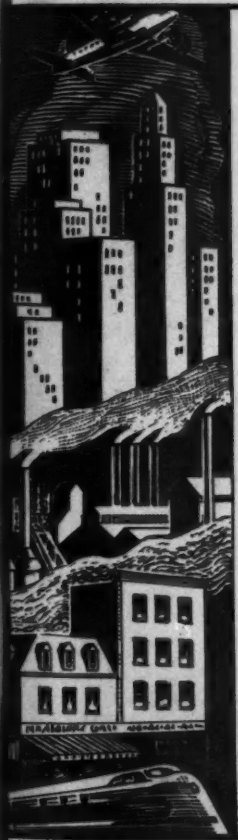

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EXCERPT

from the report filed by the Inspectors of Election along with their certification of the vote at this year's meeting of stockholders of the New York Central Railroad

. . . We commend the intelligent and effective assistance we have received from The Corporation Trust Company of New York and its efficient staff . . .

Time and time again it is members of CT's staff who are chosen when skilled hands are needed to take care of meeting details. We shall be happy to quote on your meeting work, too.

The
CORPORATION JOURNAL
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AUGUST—SEPTEMBER 1954

Contents

Recent Decisions

Out of the whirlwind of state requirements exacted nowadays from a corporation doing business outside the state of its organization come:

—Taxes to be paid

—Reports to be filed

—Statutory agents and offices to be maintained.

Out of the confusion of it all the CT System of Corporate Protection brings to the corporation's lawyer a firm, sure mastery—enabling him to keep every single detail at his finger tips or at the finger tips of a designated individual or department in his client's office. The CT System reduces it to a matter of one thing at a time and that one thing simple.

You have a client corporation alre qualified in one or more states? Y have one about to be qualified? W or 'phone our nearest office and what the CT System can do for y

what constitutes doing business

Evaluation of Court Decisions

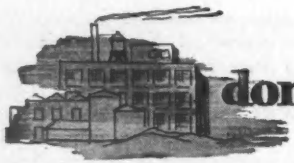
1. Qualification—Decisions of the Supreme Court of the United States

DECISIONS of the Supreme Court of the United States naturally are accorded the greatest weight by attorneys who are called upon to resolve "doing business" questions—particularly problems involving the necessity of the qualification of foreign corporations.

As it happens, however, the instances are few in which the Supreme Court has had occasion to rule upon "doing business" situations which involve qualification. The latest instance was in 1949, in a suit based on diversity of citizenship, where a corporation, not licensed in Mississippi, doing business in that state, which was barred by state law from suing in the state courts by reason of failure to qualify, was held by the Supreme Court of the United States to be barred to the same extent from suing in a Federal court sitting in that state. (*Woods v. Interstate Realty Co.*, 337 U. S. 535, 69 S. Ct. 1235.) Other decisions involving qualification, rendered during the past half century are such cases as *Union Brokerage Co. v. Jensen et al.*, (1944) 322 U. S. 202, (customhouse brokerage business ruled required to qualify); *Furst & Thomas v. Brewster et al.*, (1931) 282 U. S. 493, (shipment of goods into state in interstate commerce held not to require qualification); *Dahnke-Walker Milling Co. v. Bondurant*, (1921) 257 U. S. 282, (qualification not required in order to effect shipment of goods purchased within a state to a point outside the state); *York Mfg. Co. v. Colley*, (1918) 247 U. S. 21, (installation of machinery sold in interstate commerce ruled not to oblige qualification of seller); *Sioux Remedy Co. v. Cope*, (1914) 235 U. S. 197, (suit for payment of goods sold in interstate commerce maintainable without qualification); *International Textbook Co. v. Peterson*, (1911) 218 U. S. 664; *International Textbook Co. v. Pigg*, (1910) 217 U. S. 91, (interstate commerce—correspondence school decisions indicating qualification as not necessary.)

The State courts, in whose domain the bulk of qualification "doing business" decisions are to be found, have based their rulings in large part upon such Supreme Court decisions. However, in view of the small body of decisions in the highest court involving qualification, and the limited number of situations considered, other types of rulings by the Supreme Court of the United States involving other and varied types of situations, have also been weighed by attorneys for corporations in deciding questions concerning the necessity of qualification by unlicensed foreign corporations. These have related to doing business from the standpoint of the liability of a foreign cor-

poration to state income and franchise taxes and to state or local occupation license taxes. Typical income and franchise taxation cases, indicating exemption where interstate commerce was furthered, include *Spector Motor Service, Inc. v. O'Connor,* (1951) 340 U. S. 602, *Cheney Bros. v. Massachusetts,* (1918) 246 U. S. 147; *Ozark Pipe Line Corp. v. Monier,* (1925) 266 U. S. 555; *Alpha Portland Cement Co. v. Massachusetts,* 268 U. S. 203. *Anglo-Chilean Nitrate Sales Corp. v. Alabama,* (1933) 288 U. S. 218, involved foreign commerce. Typical of the occupation license tax rulings are *Nippert v. City of Richmond,* (1946) 327 U. S. 416, (reiteration of rule in "drummer" cases exempting those engaged in interstate commerce); *Best & Co., Inc. v. Maxwell,* (1940) 311 U. S. 454, (merchant's license tax as related to interstate solicitation); *Real Silk Hosiery Mills v. City of Portland,* (1925) 268 U. S. 325, (city licensing ordinance in its relation to interstate commerce.)



domestic corporations

CALIFORNIA

Stockholder in derivative suit where there were third party defendants, held to be required to furnish security, under the statute, for the defendants' reasonable expenses.

Plaintiff, a stockholder in defendant Juno Oil Company, instituted a stockholder's derivative suit to compel individual defendants to transfer a certain oil lease to defendant oil company and to account for and pay to that company sums received under the lease as rents and royalties. Defendants moved, under section 834 of the Corporations Code, for an order requiring plaintiff to furnish security for reasonable expenses which might be incurred by defendants in connection with the action. Plaintiff failed to deposit security as ordered by the trial court and that court dismissed the action.

The California Supreme Court affirmed this judgment, finding no merit in plaintiff's contentions that the applicable portions of section 834 are unconstitutional, particularly in their requirement that plaintiff furnish security for the expenses of individual defendants who are sued not as officers or employes of defendant corporation but as third persons who dealt with the corporation; that defendants established no ground for requiring any security or, in the alternative, that the trial court abused its discretion as to the amount and form of security required; and that the court erred in dismissing the action at a time when plaintiff's motion to modify the original order in respect to its requirements as to form and amount of security was pending.

Beyerbach v. Juno Oil Company et al., 265 P. 2d 1. Zeutzius & Steffes and A. P. G. Steffes of Los Angeles, and Jamison & Jamison of Porterville, for appellant. Harry E. Templeton and Jessie Miller, of Los Angeles, and Guy Knupp, Jr., and Burford & Hubler, of Porterville, for respondents, O'Melveny & Myers, William W. Alsup, Philip F. Westbrook, Jr., Loeb & Loeb, Allen E. Susman, John L. Cole and Herman F. Selvin, of Los Angeles, as amici curiae, on behalf of respondents. (*Appeal filed in the Supreme Court of the United States, April* 30, 1954; *Docket No.* 741. *Motion to dismiss and appeal dismissed for the want of a substantial federal question, June* 1, 1954.)

DELAWARE

In stockholders' class action to enjoin acceptance of offer of single stockholder to purchase corporation's entire assets, injunction denied where plaintiffs failed to sustain their burden of showing fraud or bad faith.

A stockholder owning approximately one-third of the outstanding shares of defendant corporation made an offer to purchase all of its assets. The offer was approved by a vote of the majority of all of the outstanding stock without counting the shares owned by the offeror. Plaintiffs instituted this stockholders' class action to enjoin the corporate defendant from accepting the offer. The Chancellor, after an exhaustive examination of the value of the assets and the terms of the offer, concluded that plaintiffs had failed to sustain their burden of showing fraud or bad faith and ruled that they were not entitled to an injunction restraining the effectuation of the offer.

Schiff et al. v. RKO Pictures Corp. et al., 104 A. 2d 267. Herbert L. Cobin of Wilmington, Harry J. Halperin, Samuel L. Scholer and Edmund B. Hennefeld (of Helperin, Natanson, Shivitz & Scholer) and Bernard Buchwald (of Hoffman, Bondi, Buchwald & Hoffman) of New York City, for plaintiffs. Russell J. Willard (of Hastings, Stockly & Walz of Wilmington, Israel Beckhardt and Louis C. Fieland of New York City, for Sidney Schwartz, intervening plaintiff. William S. Potter and Richard F. Corroon (of Berl, Potter & Anderson) of Wilmington, Ralston R. Irvine, Roy W. McDonald and Thomas K. Fisher (of Donovan, Leisure, Newton, Lumbard & Irvine) of New York City, for defendant RKO Pictures Corp. Robert C. Barab of Wilmington, and Nemerov & Shapiro of New York City, for Milton Friedman, intervening defendant.

Individual, leaving one corporation bearing his name for another whose name was changed to include his name, ruled entitled to make such use of his name, with admonition to inform public in all dealings of the separate organizations and certain related circumstances.

From the time of the incorporation of plaintiff, Carl Springer, Inc., in 1949 until January 26, 1954, Carl Springer was a minority stockholder and president of that company. Two days after the latter date, defendant company with which Carl Springer became associated and eventually controlled, changed its name to Carl Springer Supply Co., Inc. Both companies were engaged in the same business. At approximately the same time a notice was sent by defendant to members of the trade in general, including customers of plaintiff. This indicated the change of name, the fact that the individual was taking control and would be president and where business would be carried on, inquiries and orders being solicited. In addition, the names of officers of the defendant company were given, with a reference to the fact that the Secretary and Treasurer was formerly a salesman of plaintiff.

The Court of Chancery, Sussex County, in an action by plaintiff seeking to enjoin defendant from using the name "Carl Springer" as a part of its corporate name, observed: "Springer had the right to use his own name when changing the name of the defendant and the fact that plaintiff was injured thereby would avail plaintiff nothing unless the confusion caused by the change was aggravated in some manner by artificial means leading to a confusion beyond that arising by the mere similarity of names." The court noted that nowhere in the notice did he state that he had severed all connection with the plaintiff or that the corporation with which he was becoming associated was actually a different corporation from the plaintiff. The resulting confusion was stressed by the court, which concluded: "Since plaintiff also uses the name 'Carl Springer,' in competition with defendant, defendant must make every reasonable effort to avoid confusion which might be caused by the use of the name. In all its advertising matter and stationery and in all its dealings with the public, the attention of the public must be called specifically to the fact that plaintiff and defendant are entirely separate organizations and that neither defendant nor Carl Springer is in any manner connected with the plaintiff."

Carl Springer, Inc. v. Carl Springer Supply Co., Inc., Court of Chancery, Sussex County, April 21, 1954. Robert W. Tunnell and Arthur Dean Betts of Tunnell & Tunnell, of Georgetown, for plaintiff. David Snellenberg II of Killoran & Van Brunt of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 514785.

Optionees under stock option plan held indispensable parties to suit by stockholder on behalf of corporation, where suit sought to enjoin carrying out of plan.

This was a stockholder's action to enjoin defendant Delaware corporation from carrying out a stock option plan, on the ground that the stock options were granted without consideration. Two questions were considered. The first concerned whether the corporation was a real party defendant as well as a party plaintiff. The Court of Chancery, New Castle County, ruled that it was a real party defendant. The court had previously held in this case that this was an action for a wrong to the corporation and not to the stockholders personally or individually and that therefore the action was a derivative one by the stockholder on behalf and for the benefit of the corporation. (*Elster et al. v. American Airlines, Inc.*, 100 A. 2d 219; The Corporation Journal, February—March, 1954, page 306.)

A second question considered was whether the optionees of the stock were indispensable parties to the action. None had been joined as parties defendant. The court remarked that there could be no question that they would be proper parties to the action. It noted that there was a contractual relationship between defendant and the optionees, under which they obtained certain rights, which the plaintiff sought to have the court nullify and enjoin. Granting defendant's motion to dismiss, the court concluded that under the circumstances "a determination of the rights of the optionees in this action without making them parties would be contrary to the principles of equity and good conscience."

Elster v. American Airlines, Inc., Court of Chancery, New Castle County, June 14, 1954. Robert C. Barab of Wilmington, and William E. Haudek of Pomerantz, Levy & Haudek of New York City, for plaintiff. Richard F. Corron of Berl, Potter & Anderson of Wilmington, and Malcolm A. MacIntyre and Harold M. Childers of DeBevoise, Plimpton & McLean of New York City, for defendant. Commerce Clearing House Court Decisions Requisition No. 517885. A subsequent opinion, dated June 16, 1954, related to certain interrogatories propounded to defendant by the plaintiff, concerned with the identity of the optionees and the circumstances of the issuance of the stock options. The court regarded as proper an interrogatory seeking the name, address and nature of employment of each optionee, the number of shares for which each option had been exercised and the total number of shares held by each optionee. The court overruled defendant's objection to an interrogatory asking whether consideration was received from the optionees for the granting of the options, and, if so, the nature of the consideration, and whether or not there was an agreement in writing. Also allowed were questions whereby plaintiff sought the total number of shares held of record and not of record by each optionee which had been acquired otherwise than by exercise of the options. (*Elster v. American Airlines, Inc.*, Court of Chancery, New Castle County, June 16, 1954. Commerce Clearing House Court Decisions Requisition No. 517885A.)

Suit instituted in Delaware federal court, between Illinois and Delaware corporations having no business activities in Delaware, ordered transferred to another state where relative convenience of parties and of the witnesses and interest of justice would be furthered.

Defendant, a Delaware corporation, with no business activities in its home state, was sued in the United States District Court, District of Delaware, by plaintiff Illinois corporation, having its principal office in Chicago and also having no business office or place of business in Delaware. Defendant's principal place of business and general and executive offices were in Detroit, Michigan, where it also operated two manufacturing plants. It also had similar plants in St. Louis, Missouri, Herrin, Illinois and Rahway, New Jersey. The defendant moved, under 28 U. S. C. Sec. 1404(a) to transfer the action to the United States District Court for the Eastern District of Michigan, Southern Division. That subsection provides that "for the convenience of the parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The court, after an examination of pertinent cases and a weighing of the relative convenience of the parties and witnesses, found that a comparison strongly favored Detroit, Michigan, over Wilmington, Delaware. It noted that suit could not have been brought in Chicago, Illinois, because defendant was not there amenable to process. Considerable inconvenience to the parties and their witnesses was also discussed if forums near the Illinois and New Jersey manufacturing plants were to be chosen.

The court granted the motion for transfer to Detroit, regarding the twin convenience of parties and witnesses and the resultant "interest of justice" consideration to favor transfer to Detroit.

General Felt Products Company v. Allen Industries, Inc., United States District Court, District of Delaware, March 30, 1954. E. Ennalls Berl of Berl, Potter & Anderson of Wilmington, and Sidney Neuman of Thiess, Olson, Mecklenberger, Von Holst & Coltman of Chicago, Illinois, for plaintiff. Alexander L. Nichols, S. Samuel Arsht and John T. Gallagher of Morris, Steel Nichols & Arsht of Wilmington, and Oscar A. Marcus and Howard M. Lubbers of Freund, Markus, Gilbert & Lubbers of Detroit, Michigan, for defendant. Commerce Clearing House Court Decisions Requisition No. 513683.

NEW JERSEY

Stockholder, seeking inspection of stock books in good faith, ruled entitled to order for such inspection.

Plaintiff corporate stockholder in defendant corporation sought to inspect the stock books for the purpose of obtaining a list of the stockholders and soliciting proxies to be voted at the annual meeting and to circularize an offer

to purchase their stock holdings. Defendant contended that the request, which the proofs indicated had been refused, was not made in good faith. The Superior Court of New Jersey, Appellate Division, finding that the proof did not establish this, affirmed a judgment entitling plaintiff to an order directing the defendant corporation to permit the inspection.

Feist et al. v. Joseph Dixon Crucible Co., 103 A. 2d 893. James P. Beggans of Jersey City, for plaintiffs-respondents (Richard H. Hughes of Morristown, on the brief; Carpenter, Gilmour & Dwyer of Jersey City, attorneys.) Thomas V. Jardine, of Newark, for defendant-appellant (Robert Carey, Jr., of counsel; Carey, Schenk & Jardine, of Newark, attorneys.)

foreign corporations

CALIFORNIA

Unlicensed corporation, selling goods manufactured in another state outright to local distributors, who sold to their own customers, held not subject to service of process.

Petitioner, an Ohio corporation not licensed in California, sought a writ in the California District Court of Appeal, Third District, directing respondent county court to desist from any further proceedings against it in a personal injury action brought against it and others and to vacate an order denying petitioner's motion to quash substituted service of summons made on it in that action. The court granted the writ, regarding petitioner company as not doing business so as to be amenable to the process of the courts of the state. The evidence showed that wholesale electric hair dryers manufactured and sold by petitioner reached California by sales to wholesalers and distributors upon their orders, who sold them to local purchasers who had no contract with petitioner. Dryers were not shipped on consignment and petitioner did not control the price for retail sales. Petitioner had no salesmen, bank accounts or real or personal property in the state.

Martin Bros. Electric Co. v. Superior Court in and for Stanislaus County et al., 264 P. 2d 183. Keith, Creede & Sedgwick of San Francisco, for petitioner. John Said of Fresno, Honey & Mayall of Stockton, C. Ray Robinson, by F. Leon Edlefsen and William B. Boone of Merced, for respondents and real parties in interest.

THE DISTRICT OF COLUMBIA

A NEW PROBLEM FOR LAWYERS

The problem arises out of the passage, by Congress, of a new Business Corporation Act for the District of Columbia. It becomes effective December 5, 1954. From the viewpoint of the practicing corporation lawyer it is just as though a 49th state has been added to the Union.

Between now and the effective date of the new law the activities of foreign corporations operating in the District will have to be checked to see if those activities constitute "doing business" of such a nature as to require qualification. Qualification was not required under the old law. It is required under the new law. And there are heavy penalties for failure to comply.

Domestic corporations will provide a problem all their own. Counsel in some cases may elect to reincorporate presently existing District of Columbia corporations under the new law to take advantage of its more modern provisions. The Act provides a special procedure to be followed.

RPORATION LAW

Incorporation of new companies under the new law is restricted to corporations with their principal place of business in the District. While the old law is not repealed, incorporation of business corporations for profit must be incorporated under the new law after December 5.

But these are only highlights.

We would like very much to send you, without charge, all the information we now have on the new law. We would also like to explain why it may be good business to be prepared to effect qualification on the effective date of the new law.

Lawyers (only) may have the information upon request. Ask at the nearest C T office (see back cover for address) or write directly to The Corporation Trust Company, 120 Broadway, New York 5, N.Y.

CONNECTICUT

Foreign company, soliciting business for New York rest home through Connecticut agent and through circulation of advertising brochure in Connecticut, ruled not doing business so as to be subject to service of process.

Defendant, a New York corporation not licensed in Connecticut, operated a rest home in New York where plaintiff, while a guest or patient, fell and sustained injuries on an allegedly defective stairway in the home. She was moved to a hospital in Connecticut. While there she was visited by defendant corporation's secretary. The latter was served in her capacity as secretary of the company, and defendant sought to have the service set aside.

The Superior Court, New Haven County, at Waterbury gave judgment for the defendant, finding its only connection with the state was solicitation of business for the New York home in Connecticut by a brother of the corporation's secretary and through the circulation of a brochure advertising its business. This the court regarded as insufficient to give rise to jurisdiction over the company for the purpose of service of process upon it.

*Moore v. Crestwood Manor, Inc.,** 18 Conn. Sup. 387. Luke H. Stapleton of Cheshire, for the plaintiff. Schofield & Fay of Hartford, for the defendant. Commerce Clearing House Court Decisions Requisition No. 511756.

* The full text of this opinion is printed in the **State Tax Reporter,** Connecticut, page 351.

MISSOURI

Ownership, rental and maintenance of advertising signs in state held "doing business" which would bar maintenance of suit by unqualified corporation.

This was a suit on contract by an unlicensed foreign corporation which sought to recover rentals for a period of thirty-six months for fifteen advertising displays or signs erected in Missouri for the defendant. The latter contended that plaintiff was doing business and could not maintain suit under Secs. 351.570 and 351.635, barring an unlicensed foreign corporation, doing business, from maintaining suit upon demands arising out of contract or tort. The defendant's signs were solicited by a Missouri salesman of plaintiff, who arranged for the leasing of the land on which they were to be erected. They were built at plaintiff's plant in Nebraska and shipped by common carrier to a firm at Kansas City, Missouri, which erected the signs, and serviced them, being reimbursed by plaintiff, which retained title to the signs. Plaintiff's president and a vice-president entered the state about every ninety days

to inspect signs placed throughout Missouri by their company.

After an examination of these and surrounding circumstances, the Kansas City Court of Appeals concluded that plaintiff was transacting business in the state within the contemplation of the statutes mentioned. The court stressed that the shipment of the signs from Nebraska did not finally determine that plaintiff was engaged in interstate commerce, observing that "the very purpose of the contract was for certain services to be rendered by plaintiff to defendant for profit, all of which were to take place in Missouri." A judgment for plaintiff was reversed.

Western Outdoor Advertising Co. of Nebraska v. Berbiglia, Inc., 263 S. W. 2d 205. Brenner, VanValkenburgh & Wimmell by Daniel L. Brenner and Bernard L. Balkin of Kansas City, for appellant. Newbill, Brannock, Buck & Gray, by W. Arnold Brannock and William G. Gray of Kansas City, for respondent.

NEW JERSEY

Qualified Illinois company, failing to withdraw, dissolved in home state more than two years before action was commenced against it in New Jersey federal court, ruled subject to suit.

An Illinois corporation, which had been qualified in New Jersey, but which had failed to withdraw, which was made a party defendant to a suit in the United States District Court, District of New Jersey, moved that the complaint be dismissed as to it. The ground given was that the action was instituted more than two years after it had ceased to exist as a corporation, as evidenced by a certificate of dissolution issued by the Secretary of State of Illinois. Under Illinois law, provision is made for the survival of remedies against a dissolved corporation "if action or other proceeding thereon is commenced within two years after the date of such dissolution." The court noted that the company had failed to comply with the procedure required for formal withdrawal from the State of New Jersey. Also, that there is a New Jersey statute which continues a domestic or foreign corporation after dissolution for the purpose of defending actions brought against it. (N. J. S. A. 14:13-14.)

The court observed that "there can be no question that their powers and their dissolution are governed by the law of their domicile. But when they leave the place of their abode, they become subject to the laws of the places in which they choose to ask authority to operate, and they may have no rights which may contravene the laws of the state where they are licensed to function, no matter what the power given them by the legislature of their parent state."

Denying the motion to dismiss the complaint, the court emphasized that New Jersey had, by the statute cited, preserved the right of suit against the corporation.

Dr. Hess & Clark, Inc. v. Metalsalts Corp. et al., 119 F. Supp. 427. Thorn Lord of Trenton, for plaintiff. George J. Sokalski of Paterson, for defendant Metalorganics, Incorporated.

OKLAHOMA

Service set aside where made on state official as statutory agent for unlicensed foreign corporation engaged only in interstate commerce.

Defendant below, S. Howes Company, Inc., against whom judgment had been rendered, a foreign corporation not licensed in Oklahoma, had been served by service on the Secretary of State under the provisions of 18 O. S. 1941, Secs. 455 and 472. It appealed to the Oklahoma Supreme Court, objecting to jurisdiction over it. "Therefore," said the higher court, "the only question necessary for determination is whether or not said defendant was doing business, or had done business, in this state, making it amenable to legal process therein."

The plaintiff requested an Oklahoma commission broker to find a machine suitable for use in its mill. Subsequently an order blank, completed by plaintiff was sent by the broker to defendant in New York for acceptance, after which the machine was shipped to plaintiff in Oklahoma and installed in conformity with instructions of defendant furnished to plaintiff through the broker and defendant received the purchase price. Later a fire occurred involving the machine and defendant sent an agent into Oklahoma to investigate and advise and an exchange of certain parts was made.

The Supreme Court of Oklahoma, reversing the court below, gave judgment for the defendant corporation, regarding it as not doing business within the state, observing that the defendant did no act within the state other than to advise and recommend. "The record," remarked the court, "contains evidence of other items of machinery being sold to other purchasers within this state, but there is nothing to indicate that those transactions were anything more than interstate commerce."

S. Howes Company, Inc. v. W. P. Milling Company, Supreme Court of Oklahoma, February 23, 1954. Banker, Bonds & Wilcoxen of Muskogee, for plaintiff in error. Morman & Wheeler of Muskogee, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 510549.

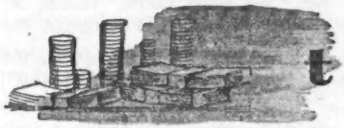
TEXAS

Affixing of seal in another state to contract prepared and signed in Texas, relating to Texas property, ruled not to take contract out of category of a contract "delivered in Texas."

In *Glo Co. v. Murchison et al.*, 208 F. 2d, 714, (The Corporation Journal, April—May, 1954, page 333), the United States Court of Appeals, Fifth Circuit, held that a foreign corporation, not licensed in Texas, owning and assigning mineral leases in Texas, was "doing business" in that state so as to be barred from maintaining suit in a Texas Federal District Court. Upon a petition for a rehearing, the Court of Appeals considered a contention that the conveyance in question was not "delivered in Texas." On this point, the court observed: "The

contract in this case was one for the assignment of interests in oil and mineral leases on land or lands lying and being situated in Texas. Negotiations with reference to the transaction were conducted in Texas by the parties thereto. The contract was prepared and signed in Texas. It was then sent out of the state to have the seal of the assignor affixed thereto; thereafter it was returned to Texas. The affixing of the seal was but one formal step in the process of carrying out the contract that was to be performed in Texas. The laws of Texas may not be circumvented merely by affixing appellant's corporate seal out of the state after all other acts and things necessary for a contract in contemplation of law were done in Texas. The petition for rehearing is denied."

Glo Co. v. Murchison et al., 210 F. 2d 372. Thomas H. Fisher of Chicago, Ill., and Carl Wright Johnson of San Antonio, for appellant. Lucian L. Morrison, John H. Dittmar, P. H. Swearingen, L. M. Bickett of San Antonio, and M. D. Kirk and James C. Denton, Jr., of Tulsa, Okla., for appellees.



taxation

MISSISSIPPI

Rentals from machines leased within state ruled subject to sales tax, while royalties from the same machines were exempt.

Defendant had leased, under written contract, to certain persons in Mississippi, box making machines on which it held U. S. patents. The lessees acquired no property rights other than the right to use the machines, to make patented boxes thereon, to use the method inventions covered by the patents and to sell the boxes in the United States. Certain payments were to be made by the lessee. Examining the contract calling for these payments, the Mississippi Supreme Court regarded the lessee as liable to the lessor for both rental payments and royalty payments. The court concluded that the rental payments were taxable under the state sales tax requirements, but that the royalty payments were not taxable. The court also regarded the machines as having obtained a business situs apart from the domicile of their owner and, being located in the state, the tax could be collected by it.

Stone v. Stapling Machines Co.,* 71 So. 2d 205. J. H. Sumrall and John E. Stone of Jackson, for plaintiff. Tighe & Barksdale of Jackson, for defendant. (*Appeal filed in the Supreme Court of the United States, June 2, 1954; Docket No.* 800.)

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* The full text of this opinion is printed in the **State Tax Reporter**, Mississippi, page 10,008.

NEBRASKA

Federal Supreme Court upholds Nebraska's apportioned ad valorem tax on flight equipment of interstate air carrier.

In *Mid-Continent Airlines, Inc., (now Braniff Airways, Inc.) v. Nebraska State Board of Equalization and Assessment,* 59 N. W. 2d 746, (The Corporation Journal, February—March, 1954, page 313), the Nebraska Supreme Court upheld statutory provisions for the ad valorem taxation of flight equipment of a foreign airlines company, domiciled in another state, on an apportionment basis, where such equipment was used in interstate commerce. Upon appeal to the Supreme Court of the United States, this judgment has been affirmed.

The appellant rented ground facilities in Nebraska and approximately one-tenth of its revenue was produced by the pickup and discharge of Nebraska freight and passengers. This was in addition to eighteen stops per day by appellant's aircraft in Nebraska. It argued that the federal statutes governing air commerce, enacted under the commerce clause, preempted the field of regulation of such air commerce and precluded the Nebraska tax. The high court could not agree and ruled that existent federal air-carrier regulations did not preclude the challenged tax. The appellant's ultimate contention was that its aircraft never "attained a taxable situs within Nebraska." The question "whether an instrumentality of commerce has tax situs in a state for the purpose of subjection to a property tax," the court noted, "is one of due process." The court regarded the appellant's regular contacts with the state as sufficient to sustain the power of Nebraska to levy an apportioned ad valorem tax on its aircraft.

*Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment et al.,** 74 S. Ct. 757. William J. Holtz, Sr., of Omaha, for appellant. C. C. Sheldon, of Lincoln, for appellees.

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* The full text of this opinion is printed in the **State Tax Reporter,** Nebraska, page 2795.

state legislation

District of Columbia — A new corporation law, known as the "District of Columbia Business Corporation Act," H. R. 3704 (Public Law 389; Chapter 269) will become effective December 5, 1954. Provision is not made for the repeal of the existing domestic corporation law. Presently existing corporations will continue to be subject to it unless they desire to become subject to the new law by reincorporating or incorporating under it, as is therein provided. Under the new act, foreign corporations will be required to procure certificates of authority before transacting business in the District, those doing business when the act becomes effective, December 5, 1954, being allowed six months thereafter within which to comply. All foreign corporations and all domestic corporations incorporated or reincorporated under the new act, will be required to designate a registered office and a registered agent, which agent may be a corporation.

Massachusetts — Chapter 459 contains provision for the exemption from local property taxes of personal property of those having neither a domicile nor a place of business in Massachusetts, while such property is stored in original packages in a licensed public warehouse. The exemption does not apply to any portion of a warehouse owned or leased by either a consignor or a consignee.

Mississippi — Senate Bill 1516 provides that no corporation shall transact any business or incur any indebtedness, except as shall be incidental to its organization until there has been paid in for the issuance of shares consideration of the value of at least $500.

S. B. 1229 amends Section 5310 to provide specifically for a minimum number of two incorporators, who are required to be residents of the United States.

House Bill 511 permits any foreign mutual savings bank and banking association or corporation to hold mortgages and to carry on certain related activities within the state without qualifying to do business in the state.

S. B. 1227 amends Section 5326 relating to the election of directors to provide that directors or managers need not be stockholders, unless otherwise provided in the articles of incorporation or an amendment thereto.

New York — Chapter 488 removes the twelve-month provision referring to the filing of a certificate when shares have been converted under Section 27 of the Stock Corporation Law or when preferred stock has been redeemed under Section 28 of the Stock Corporation Law. A certificate is now required to be filed whenever shares are so converted or redeemed.

Section 20 of the Stock Corporation Law has been amended by Chapter 810 to provide that, in the absence of any provision in the certificate of incorporation or amendment thereto, shareholder consent is required only if the sale, lease or exchange is not made in the regular course of business and involves all or substantially all of the corporate property, rights, privileges or franchises, or an integral part thereof essential to the conduct of the business of the corporation.

appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

CALIFORNIA. Docket No. 741. *Beyerbach v. Juno Oil Company,* 265 P. 2d 1. (The Corporation Journal, August—September, 1954, page 4.) Stockholder's derivative action—security for costs. **Appeal filed, April 30, 1954. Motion to dismiss granted and appeal dismissed for the want of a substantial federal question, June 1, 1954.** (74 S. Ct. 853.)

MISSISSIPPI. Docket No. 800. *Stone v. Stapling Machines Co.,* 71 So. 2d 205. (The Corporation Journal, August—September, 1954, page 15.) Sales tax—receipts from rentals of machinery. **Appeal filed, June 2, 1954.**

NEBRASKA. Docket No. 476. *Mid-Continent Airlines, Inc., (now Braniff Airways, Inc.) v. Nebraska State Board of Equalization and Assessment,* 59 N. W. 2d 746. (The Corporation Journal, February—March, 1954, page 313.) Taxation of foreign airflight equipment on an apportionment basis, where used in interstate commerce. **Appeal filed, November 23, 1953. Probable jurisdiction noted, January 4, 1954. Argued, March 12, 1954. Affirmed, June 1, 1954.** (74 S. Ct. 757; see page 16.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1953-1954.

regulations and rulings

Arkansas — Materials purchased by contractors for use in the construction of manufacturing plants, public communication, transmission or transportation facilities are exempt from the use tax, even if the incidence of purchase is by contractors. (Letter, Commissioner of Revenues, State Tax Reporter, Arkansas, ¶ 65-009.)

A foreign corporation must qualify before doing intrastate business in Arkansas, regardless of whether it holds a contractor's license from the Arkansas Contractor's Licensing Board. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 2-201.)

Colorado — The failure by a corporation to pay the annual corporation license tax does not create a lien on the property of the corporation; penalty of 1% a month is imposed for failure to pay the tax. The corporation also loses its right to transact business during the time it is delinquent in the payment of such tax. (Letter of Secretary of State, State Tax Reporter, Colorado, ¶ 9-001.)

Indiana — Applicants for store licenses are required to give evidence of payment of personal property and poll taxes in accordance with Chapter 124, Laws 1931. The question is whether or not the store license is one "to practice any profession, trade or occupation for the practice of which a state license is required by law." It is clear from the provisions of the law itself and from court decisions regarding the act that the Indiana store license law is an occupational license act; therefore, the requirement of evidence of payment of taxes is applicable. (Opinion of the Attorney General, State Tax Reporter, Indiana, ¶ 42-504.)

Kentucky — There are no registration or licensing requirements for a foreign corporation operating as a correspondence school in this state other than the statutory provision requiring a foreign corporation to register with the Secretary of State if it maintains an office for business in the state. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 30-012.40.)

Louisiana — A parish in which a business does not have its office, but where it carries on activity which is merely a component of, and incidental to, its main work, cannot levy an occupational license tax on that business. The tax may be levied only by the parish where the business has its office and does its main work. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 200-068.)

A parish may not levy occupation license taxes on manufacturers on the ground that they are wholesalers of their products. Manufacturers, both as such and as wholesalers of the articles they made, are exempt from the license tax. (Opinion of the Attorney General, State Tax Reporter, Louisiana ¶ 200-069.)

Michigan — Sales orders of a Michigan corporation which are solicited and accepted within the state and then placed with an out-of-state manufacturer, who fills the orders and ships the manufactured products directly to the customers involved, are not transactions in interstate commerce and are subject to the sales tax. (Ruling of State Board of Tax Appeals, State Tax Reporter, Michigan, ¶ 200-118.)

some important matters

For August and September

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Arizona — Annual Report and Fee due on or before September 30.—Domestic and Foreign Corporations.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California — Franchise Tax based on net income. Second Installment due on or before September 15.—Domestic and Foreign Corporations.

Connecticut — Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Kentucky — Report of Unclaimed Dividends, etc., due on or before September 1.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Maine — Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

Oklahoma — Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

Oregon — Annual License Fee due August 15.—Domestic Corporations.

Annual License Fee due August 15.—Foreign Corporations.

Report of Abandoned Property due on or before September 1.—Domestic and Foreign Corporations.

Quebec — Annual Return to Provincial Secretary due on or before September 1.—Domestic and Foreign Corporations.

United States — Third installment of Income Tax due September 15.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Corporate Tightrope Walking. A 1954 look at recent developments which affect corporations carrying on business in interstate commerce.

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